737

Mr Justice Miller

SUPREME COURT OF THE UNITED STATES.

No. ~~201~~. 429 52. 27.

MOSES KNEELAND, JACKSON HADLEY, AND CHARLES E. JENKINS, PLFFS. IN ER.,

vs.

OLIVER AMES, OAKES AMES, AND OLIVER AMES, Jr.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

G. S. GIDEON, Printer, 511 Ninth street, Washington.

SUPREME COURT OF THE UNITED STATES.

No. 291.

MOSES KNEELAND, JACKSON HADLEY, AND CHARLES E. JENKINS, PLFFS. IN ER.,

vs.

OLIVER AMES, OAKES AMES, AND OLIVER AMES, Jr.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

INDEX.

	Original.	Print.
Præcipe	1	1
Summons	3	1
Return to summons	3	2
Declaration	5	2
Plea	7	5
Affidavit of merits of Jackson Hadley	7	5
Affidavit of merits of Charles E. Jenkins	8	6
Affidavit	9	6
Affidavit of merits of Moses Kneeland	10	7
Notice	10	7
Trial	13	9
Motion for new trial	13	9
Motion for new trial overruled, and judgment	14	9
Bill of exceptions	15	10
Bond	26	17
Approval of bond, &c	27	18
Clerk's certificate	29	18
Writ of error	30	18
Citation	32	19
Citation returned	33	19

District court of the United States of America for the district of Wisconsin.

United States of America, district of Wisconsin, ss.

At a special term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, on the second Monday (being the eighth day) of November, A. D. 1858. Present: the honorable Andrew G. Miller, judge of said court, presiding; Major J. Thomas, marshal; and John M. Miller, clerk.

OLIVER AMES, OAKES AMES, and OLIVER AMES, Jr.,
vs.
MOSES KNEELAND, JACKSON HADLEY, and CHARLES E. JENKINS.

Be it remembered, that heretofore, to wit, on the seventeenth day of June, A. D. 1858, came Oliver Ames, Oakes Ames, and Oliver Ames, jr., by Messrs. Finches, Lynde and Miller, their attorneys, and filed their praecipe for a summons against Moses Kneeland, Jackson Hadley and Charles E. Jenkins, as follows:

Praecipe.

U. S. D. C., Wisconsin.

OLIVER AMES, OAKES AMES, and OLIVER AMES, Jr.,
vs.
MOSES KNELAND, JACKSON HADLEY, and CHARLES E. JENKINS.

Issue summons in above entitled cause, returnable first Monday of July. Assumpsit. Damages $5,000.
June 17, 1858.

Yours, &c.,
FINCHES, LYNDE & MILLER,
Plffs. Attys.

To J. M. MILLER, *Clerk, &c.*

Whereupon a summons issued as follows:

Summons.

The United States of America, district of Wisconsin. ss.

The President of the United States of America to the marshal of the district of Wisconsin, greeting:

You are hereby commanded to summon Moses Kneeland, Jack-

son Hadley, and Charles E. Jenkins, to appear before the district court of the United States of America, for the district of Wisconsin aforesaid, at Madison, on the first Monday of July next ensuing, then and there to answer unto Oliver Ames, Oakes Ames, and Oliver Ames, jr., in a plea of trespass on the case on promises, to their damage five thousand dollars, which shall then and there be made to appear. And of this writ make due return.

Witness the Hon. Andrew G. Miller, judge of the said district court of the United States, at the city of Milwaukee, in the said district of Wisconsin, this seventeenth day of [SEAL.] June, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States the eighty-second.

J. W. MILLER, *Clerk.*

FINCHES, LYNDE, & MILLER, *Attorneys.*

Return.

And on or before the return day of said writ came the said marshal and returned said writ, with his return endorsed thereon, as follows:

"Served on the within named Charles E. Jenkins, by showing him this summons, and delivering a copy thereof to him, this 29th day of June, 1858, and served on the within named Moses Kneeland by leaving a copy of this summons at his usual place of abode, he not being found, this 30th day of June, 1858.

M. J. THOMAS, *Marshal.*

"Served on the within named Jackson Hadley by showing him this summons and delivering him a copy thereof, this 3d day of July, 1858.

Fees, $12 78.

M. J. THOMAS, *Marshal.*
By WM. H. THOMAS, *Deputy.*

And afterwards, to wit, on the third day of July, A. D. 1858, came the said plaintiffs, by their said attorneys, and filed their declaration, as follows:

Declaration.

District court of the United States for the district of Wisconsin, of the first Monday of July, A. D. 1858.

District of Wisconsin, ss.

Oliver Ames, Oakes Ames, and Oliver Ames, jr., who were, at the time of making the promises hereinafter set forth, co-partners in trade, doing business in the State of Massachusetts, under the

name, firm, and style of Oliver Ames and Sons, and who are citizens of the State of Massachusetts, by Finches, Lynde, and Miller, their attorneys, complain of Moses Kneeland, Jackson Hadley, and Charles E. Jenkins, of the State of Wisconsin, and who are citizens of the State of Wisconsin, of a plea of trespass on the case upon promises:

For that, whereas the said defendants, on the sixteenth day of June, in the year one thousand eight hundred and fifty-eight, at the said district of Wisconsin, were indebted to the said plaintiffs in the sum of five thousand dollars, lawful money of the United States of America, for the work and labor, care and diligence of the said plaintiffs, by the said plaintiffs before that time done, performed, and bestowed in and about the business of the said defendants and for the said defendants, and at the special instance and request of the said defendants, and also for divers materials and other necessary things by the said plaintiffs found, provided, used and applied in and about that work, at the special instance and request of the said defendants, and being so indebted to the said plaintiffs, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the sum of money last mentioned, when the said defendants should be thereunto afterwards requested. And whereas, also, the said defendants afterwards, to wit, on the same day and year, and at the place aforesaid, in consideration that the said plaintiffs had before that time, at the like special instance and request of the said defendants, done, performed, and bestowed divers other work and labor, care and diligence, in and about the business of the said defendants, and for the said defendants, and had before that time found, provided, used and applied divers other materials and other necessary things in and about that business, the said defendants then and there undertook and faithfully promised the said plaintiffs that the said defendants would well and truly pay the said plaintiffs so much money as the said plaintiffs reasonably deserved to have of the said defendants for the same, when the said defendants should be thereunto afterwards requested; and the said plaintiffs aver that the said plaintiffs therefore reasonably deserve to have of the said defendants for the same the further sum of five thousand dollars, of like lawful money as aforesaid, to wit, at the place aforesaid, whereof the said defendants afterwards, to wit, on the same day and year, and at the place aforesaid, had notice. And whereas, also, the said defendants, afterwards, to wit, on the same day and year, and at the place aforesaid, were indebted to the said plaintiffs in the sum of five thousand dollars, of like lawful money as aforesaid, for divers goods, wares, and merchandise, by the said plaintiffs before that time sold and delivered to the said defendants, and at the like request of the said defendants. And in the

further sum of five thousand dollars of lawful money as aforesaid, for so much money before that time lent and advanced by the said plaintiffs to the said defendants, and at the like request of the said defendants. And for other money by the said plaintiffs before that time paid, laid out and expended for the said defendants, and at the request of the said defendants. And for other money by the said defendants before that time had and received to and for the use of the said plaintiffs. And being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said several sums of money in this count mentioned, when the said defendants should be thereunto afterwards requested. And whereas, also, the said defendants afterwards, to wit, on the same day and year, and at the place aforesaid, accounted together with the said plaintiffs of and concerning divers other sums of money before that time due and owing from the said defendants to the said plaintiffs, and then and there being in arrear and unpaid, and upon such accounting the said defendants then and there found to be in arrear and indebted to the said plaintiffs in the further sum of five thousand dollars, of like lawful money as aforesaid. And being so found in arrear and indebted to the said plaintiffs, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned, when the said defendants should be thereunto afterwards requested. Nevertheless, the said defendants, although often requested, &c., have not yet paid the several sums of money above mentioned, or any or either of them, or any part thereof to the said plaintiffs, but to pay the same or any part thereof to the said plaintiffs, the said defendants have hitherto altogether refused, and still do refuse, to the damage of the said plaintiffs of five thousand dollars, and therefore the said plaintiffs bring suit, &c.

FINCHES, LYNDE, & MILLER,
Plaintiffs' Attorneys.

To the within defendant:

Take notice that the following is a copy of the promissory note which will be offered in evidence on the trial of this cause under the money accounts in the within declaration contained.

Yours, &c.,
FINCHES, LYNDE, & MILLER,
Plaintiffs' Attorneys.

$3,000. ST. PAUL, July 4, 1857.

Four months after date we promise to pay to the order of Ed-

mund Rice, at the State Bank of Milwaukee, in the city of Milwaukee, three thousand dollars, for value recd.

MOSES KNEELAND,
J. HADLEY,
CHARLES E. JENKINS.

Endorsed: EDMUND RICE,
Milwaukee, Wis.

And the said plaintiffs allege that the said Edmund Rice is a citizen of the State of Minnesota.

And afterwards, to wit, on the seventh day of July, A. D. 1858, came the said defendants, by Messrs. Palmer & Stark, their attorneys, and filed their plea, as follows:

Plea.

U. S. dist. court, dist. of Wisconsin, July term, 1858, of the first Monday in July, 1858.

JACKSON HADLEY, MOSES KNEELAND, and CHARLES E. JENKINS, ads. OLIVER AMES, OAKES AMES, and OLIVER AMES, Jr.

And the said Jackson Hadley, Moses Kneeland, and Charles E. Jenkins, defendants in this suit, by Palmer & Stark, their attorneys, come and defend the wrong and injury, when, &c., and say that they did not undertake or promise in manner and form as the said plaintiffs have above thereof complained against them, and of this, they, the said defendants, put themselves upon the country.

PALMER & STARK,
Defts. Attys.

And same day, to wit, July 7th, A. D. 1858, came the defendants, Jackson Hadley and Charles E. Jenkins, by their said attorneys, and filed their separate affidavits of merit, as follows:

Afft. of merits of J. Hadley.

U. S. dist. court, dist. of Wisconsin, of the first Monday in July, 1858.

JACKSON HADLEY, MOSES KNEELAND, and CHARLES E. JENKINS, ads. OLIVER AMES, OAKS AMES, and OLIVER AMES, Jr.

District of Wisconsin, ss.

Jackson Hadley, being duly sworn, says that he is one of the

defendants above named, and that he has a good and substantial defense upon the merits to the whole of the plaintiffs' demand in this suit; and further saith not.

J. HADLEY.

Subscribed and sworn to this 6th day of July, 1858, before me.
ROBERT C. HELFENSTEIN,
Notary Public, Milwaukee county, Wisconsin.

Affi. of merits of Chas. E. Jenkins.

District of Wisconsin, ss.

Charles E. Jenkins, being duly sworn, says that he is one of the defendants above named, and that he has a good and substantial defense upon the merits to the whole of the plaintiffs' demand in this suit; and further saith not.

CHAS. E. JENKINS.

Subscribed and sworn to this 6th day of July, 1858, before me.
D. G. ROGERS,
Notary Public, Mil. Co., Wis.

And same day, to wit, July 7th, A. D. 1858, came the same defendant, Jackson Hadley, by his said attorneys, and filed an affidavit, as follows:

Affidavit.

U. S. dist. court, dist. of Wisconsin, of the first Monday in July, 1858.

JACKSON HADLEY, MOSES KNEELAND, and CHARLES E. JENKINS, ads. OLIVER AMES, OAKES AMES, and OLIVER AMES, Jr.

District of Wisconsin, ss.

Jackson Hadley, being duly sworn, says that he is one of the defendants in the above entitled suit; that he is well acquainted with the facts constituting the defense of the defendant, Moses Kneeland, to the plaintiffs' demand herein; that deponent has fully and fairly stated said facts, and the whole case in this cause, to Joshua Stark, Esq., of the city of Milwaukee, a counsellor of this court, and the counsel of said defendant, Kneeland, in this suit, and that said Kneeland has a good and substantial defense upon the merits to the whole of the plaintiffs' demand in this suit, as deponent is advised by said counsel, after such statement made, and as deponent verily believes to be true.

J. HADLEY.

Subscribed and sworn to this 6th day of July, 1858, before me.
ROBERT C. HELFENSTEIN,
Notary Public, Milwaukee county, Wisconsin.

And afterwards, to wit, on the sixth day of September, A. D. 1858, came the said defendant, Moses Kneeland, by his said attorneys, and filed his affidavit of merits, as follows:

Afft. of merits of M. Kneeland.

In district court of the United States, district of Wisconsin.

MOSES KNEELAND, JACKSON HADLEY, and CHARLES E. JENKINS, ads. OLIVER AMES, OAKES AMES, and OLIVER AMES, Jr.

District of Wisconsin, ss.

Moses Kneeland, being duly sworn, says that he is one of the defendants in the above entitled cause, and that he has a good and substantial defense upon the merits to the whole of the plaintiffs' demand in this suit; and further saith not.

MOSES KNEELAND.

Subscribed and sworn to before me this 6th day of Sept., 1858.
SIMEON N. SMALL,
Notary Public, Milwaukee county.

And afterwards, to wit, on the fifteenth day of September, A. D. 1858, came the said defendants, by their said attorneys, and filed their notice to accompany plea of general issue, as follows:

Notice.

In district of the United States for the district of Wisconsin.

MOSES KNEELAND, JACKSON HADLEY, and CHARLES E. JENKINS, ads. OLIVER AMES, OAKES AMES, and OLIVER AMES, Jr.

GENTS.: Please take notice, that on the trial of the above entitled cause, we shall insist upon and give in evidence under the plea of the general issue heretofore filed therein, that at the time said note (a copy of which is endorsed upon the declaration in this cause) was made, to wit, on the 4th day of July, 1857, one William L. Ames, then residing at St. Paul, in the then Territory of Minnesota, was one of the corporators and directors, designated and appointed by the legislature of said Territory of Min-

nesota, in the Minnesota and Pacific Railroad Company, a corporation duly created by and under an act of said legislature, passed and approved at their extra session held in the year 1857; that said legislature had in and by said act, upon certain conditions therein expressed, granted to said railroad company, to aid in constructing its road, a portion of the lands granted to said Territory by the Congress of the United States, by an act of said Congress, approved March 3d, 1857, to aid in the construction of certain railroads in said Territory; that the above mentioned note of the defendants was made by them, endorsed by said Edmund Rice, the payee thereof, and delivered to said William L. Ames, for and in consideration that the said William L. Ames should resign his said office of director and corporator of said Minnesota and Pacific Railroad Company, and that said Ames should exert his influence to place the direction and management of said company under the control of other men than the corporators and directors named and designated in and by said act of the legislature; that the consideration above stated is the sole and only consideration for making execution and delivery of said note, and that no other or different consideration for said note ever passed to the defendants from the said William L. Ames or said Edmund Rice, or any other person whatsoever; that when said note fell due, and for a long time thereafter, said note was owned and held by, and in the possession of, the said William L. Ames; that the same is still the property of William L. Ames; that if the same was ever transferred or delivered to the plaintiffs, it was so transferred and delivered after it had matured, and been a long time past due; that it was not so transferred in good faith, but without consideration; that the plaintiffs have no interest therein; that they well knew, at the time they received said note, that the only consideration therefor was such as is herein before stated and set forth, and that the plaintiffs were well advised and had full notice; that in the hands of the said William L. Ames said note was absolutely void for want of a legal and valid consideration; that if any consideration in fact passed to the said William L. Ames from the plaintiffs for the transfer of said note, it was a debt theretofore due and owing to the said plaintiffs by said William L.; and that said note was not transferred in the ordinary course of business or trade, and is therefore in the hands of the plaintiffs, subject to any defense which the defendants might have had thereto in the hands of said William L. Ames.

Yours, &c.,

PALMER & STARK,

To the plaintiffs. *Defts. Attys.*

And afterwards, to wit, on the seventh day of said term, to wit, on the fifteenth day of November, A. D. 1858, the following proceedings were had, to wit:

Trial.

OLIVER AMES, OAKES AMES, and OLIVER AMES, Jr., vs. MOSES KNEELAND, JACKSON HADLEY, and CHARLES E. JENKINS. } At law.

This day came the parties by their counsel, and the issue herein came on to be tried; whereupon, a jury was called to try the same, who came, to wit: A. F. Coffren, John H. Smith, Daniel Quigley, Charles Brown, Henry G. Weed, Thomas Skelton, Willard Stebbins, Haynes French, Samuel G. Callahan, William Wendell, John Fallow, and J. M. Kellogg, twelve free, honest, and lawful men of the district, who were severally sworn and empanneled, and charged by the court. And the said jurors of the jury aforesaid on their said oaths respectively do say, that the defendants did assume and promise in manner and form as the said plaintiffs hath herein declared against them, and assess the damages to the said plaintiffs at the sum of three thousand two hundred and seventeen dollars and forty-five cents. And came the defendants by their counsel, and moved the court for a new trial, for reasons filed; which said motion for a new trial is as follows:

Motion for new trial.

United States dist. court, district of Wisconsin.

MOSES KNEELAND, JACKSON HADLEY, and CHARLES E. JENKINS, ads. OLIVER AMES, OAKES AMES, and OLIVER AMES, Jr.

And now come the said defendants, by Palmer & Stark, their attorneys, and move the court to set aside the verdict rendered in this cause, and for a new trial thereon, for the reason that such verdict is against law and evidence.

PALMER & STARK,
Defts. Attys.

Nov. 15, 1858.

And afterwards, to wit, on the twenty-third day of said term, to wit, on the seventh day of December, A. D. 1858, the following other proceedings were had, to wit:

Motion for new trial overruled and judgment.

OLIVER AMES, OAKES AMES, and OLIVER AMES, Jr., vs. MOSES KNEELAND, JACKSON HADLEY, and CHARLES E. JENKINS. } At law.

This day came the plaintiffs by their counsel, and the motion

of the defendants for a new trial being submitted, on consideration whereof, it is ordered by the court that said motion be and hereby is overruled. And on motion of the plaintiffs, by their counsel, it is considered and adjudged by this court now here, that the plaintiffs do have and recover of the defendants, Moses Kneeland, Jackson Hadley, and Charles E. Jenkins three thousand two hundred and seventeen dollars and forty-five cents, the damages assessed by the jury, with forty-seven dollars and ninety-three cents, their costs about their said suit in this behalf by them expended, and that they have execution therefor.

Judgment roll signed December 7th, A. D. 1858.

J. M. MILLER, *Clerk.*

Damages - - - - -	$3,217 45
Costs - - - - - -	47 93
	3,265 38

Judgment rolled filed Dec. 7th, 1858, at 5 o'clk. p. m.

J. M. MILLER, *Clerk.*

And afterwards, to wit, on the sixteenth day of December, A. D. 1858, came the said defendants, by their said attorneys, and filed their bill of exceptions, as follows:

Bill of exceptions.

District court of the United States for the district of Wisconsin.

MOSES KNEELAND, JACKSON HADLEY, and CHARLES E. JENKINS, ads. OLIVER AMES, OAKES AMES, and OLIVER AMES.

Afterwards, to wit, at a district court of the United States for the district of Wisconsin, held at the court-room in the city of Milwaukee, in said district, on the fifteenth day of November, 1858, before honorable Andrew G. Miller, judge of said district court, the aforesaid issue, so joined between the said parties as aforesaid, came on to be tried by a jury of said district of Wisconsin, for that purpose duly empanneled, good and lawful men of the said district; at which day came there as well the said plaintiffs as the said defendants, by their respective attorneys aforesaid, and the jurors of the jury aforesaid empanneled to try the said issue, being called, also came, and were then and there in due manner chosen and sworn to try the same issue; and upon the trial of that issue the counsel for the said plaintiffs, to maintain and prove the said issue on their part, offered and read in evi-

dence a promissory note, which is in the following words and figures, to wit:

$3,000. ST. PAUL, July 4, 1857.

Four months after date we promise to the order of Edmund Rice, at the Bank of Milwaukee, in the city of Milwaukee, three thousand dollars, for value received.

(Signed) MOSES KNEELAND,
J. HADLEY,
CHAS. E. JENKINS.

Endorsed: EDMUND RICE,
Milwaukee, Wis.

And here the plaintiffs rested their case.

Whereupon, the said counsel of the said defendants, to maintain and prove the said issue on their part, gave in evidence and read to the jury the deposition of William L. Ames, on file with the clerk of said court, as follows:

United States dist. court, district of Wisconsin.

MOSES KNEELAND, JACKSON HADLEY, and CHARLES E. JENKINS, ads. OLIVER AMES, OAKES AMES, and OLIVER AMES, Jr.

District of Wisconsin, ss.

Moses Kneeland, one of the defendants in the above entitled cause, being duly sworn, says that the said defendants reside in the city of Milwaukee, and State of Wisconsin, and that the defence of all the above named defendants in this cause is *is* identical; that this deponent is advised by the counsel of the said defendants, and verily believes, that the testimony of William L. Ames, who resides at St. Paul, in the State of Minnesota, is material and necessary for the said defendants on the trial and in the defence of said cause; that the said William L. Ames lives at St. Paul, in the State of Minnesota, and at more than one hundred miles from the city of Milwaukee, where the court at which this deponent expects this cause will be tried is appointed by law to be held; and this deponent is informed and believes that the said Oliver Ames, Oakes Ames, and Oliver Ames, Jr., the above named plaintiffs, reside in the State of Massachusetts, more than one thousand miles from St. Paul, the place where the examination of the said witness is expected to be taken, and that Finches, Lynde, and Miller, the attorneys for the said plaintiffs, reside at the city of Milwaukee, about three hundred and fifty miles from St. Paul, as aforesaid. MOSES KNEELAND.

Subscribed and sworn before me, this 14th day of September, A. D. 1858. JNO. A. SAVAGE, Jr.,
U. S. Commissioner, Dist. of Wisc.

District court of the United States, district of Wisconsin.

MOSES KEENLAND, JACKSON HADLEY, and CHARLES E. JENKINS, ads. OLIVER AMES, OAKES AMES, and OLIVER AMES, Jr.

Let William L. Ames, the witness named in the foregoing affidavit, be examined before me de bene esse, at my office in St. Paul, on the twenty-fourth day of September, A. D. 1858. at 3 o'clock p. m.

Saint Paul, Sept. 21st, 1858.

GEO. W. PRESCOTT,
Clerk U. S. dist. court, dist. of Minnesota, and ex-officio Commissioner, &c.

Be it remembered, that on the twenty-first day of September, in the year one thousand eight hundred and fifty-eight, at my office in the city of St. Paul, State of Minnesota, application was made to me, Geo. W. Prescott, clerk of the district court of the United States for the district of Minnesota, and ex-officio commissioner appointed under the laws of the United States to take affidavits and acknowledgments of bail, upon the affidavit of Moses Kneeland, stating that he, the said Moses Kneeland, was one of the defendants in a suit then depending in the district court of the United States in and for the district of Wisconsin, wherein Oliver Ames, Oakes Ames, and Oliver Ames, Jr., were plaintiffs, and the said Moses Kneeland and Jackson Hadley and Charles E. Jenkins were defendants; that the testimony of William L. Ames, of the city of St. Paul, State of Minnesota, was material and necessary for the said defendants on the trial and in the defence of said suit; and that he, the said William L. Ames, lived at St. Paul aforesaid, and at more than one hundred miles from the city of Milwaukee, where the court, at which said deponent expected said cause would be tried, was appointed by law to be held; that, as deponent was informed and believed, the said Oliver Ames, Oakes Ames, and Oliver Ames, jr., the above named plaintiffs, resided in the State of Massachusetts, more than one thousand miles from St. Paul aforesaid; and that Lynde & Miller, the plaintiffs' attorneys, resided at the city of Milwaukee, about three hundred and fifty miles from St. Paul aforesaid, and I was requested, in behalf of the said defendants, that the said William L. Ames might be examined according to the directions of the act of Congress in such case made and provided.

Whereupon, I ordered that the said William L. Ames should be examined de bene esse before me, at my office in St. Paul, on the twenty-fourth day of September, A. D. 1858, at three o'clock in the afternoon. And the said defendants, by John H. Brown-

son, their attorney, appearing before me at my office as aforesaid, on this said twenty-fourth day of September, in the year eighteen hundred and fifty-eight, I have therefore proceeded with the said examination.

And the said William L. Ames being carefully examined and cautioned, and duly sworn to testify the whole truth and nothing but the truth, saith, in answer to the several interrogatories put to him by the said defendants' attorney, as follows:

1st interrogatory. Are you acquainted with the parties to this action, or any or either of them, and how long have you known them?

Answer. I know them all, and have probably known them two years.

2nd interrogatory. Where did you reside during the spring and summer of the year 1857?

Answer. In St. Paul, Minnesota.

3rd interrogatory. Are you acquainted with a corporation known as the Minnesota and Pacific Railroad Company?

Answer. I am.

4th interrogatory. When, how and by what authority was such corporation created, and where is it located?

Answer. I think by the Legislature of Minnesota, of 1857, and it is located in Minnesota.

5th interrogatory. State whether or not you were one of the corporators and directors of said corporation designated or appointed by the legislature?

Answer. I was one of the directors, and I suppose, corporators appointed by the legislature.

6th interrogatory. How long did you continue to be a director of said corporation?

Answer. Until July, 1857.

7th interrogatory. How did you cease to be a director?

Answer. By resignation.

8th interrogatory. Why did you resign?

Answer. I resigned at the solicitation of Messrs. Kneeland and Hadley, and Mr. Edmund Rice. They assured me that they had an abundance of means secured to build this road, and if I would resign, the office would be valuable to them, and by having control of the board they could and would go on with the immediate construction of the road.

9th interrogatory. Look at this paper writing now produced and shown to you, purporting to be a copy of the promissory note of Moses Kneeland, J. Hadley, and Chas. E. Jenkins, made payable four months after date, to the order of Edmund Rice, at the Bank of Milwaukee, in the city of Milwaukee, for the sum of three thousand dollars, and endorsed by Edmund Rice. Was or was not such paper writing, of which this is a copy, executed in your presence?

$3,000. ST. PAUL, July 4, 1857.

Four months after date we promise to pay to the order of Edmund Rice, at the Bank of Milwaukee, in the city of Milwaukee, three thousand dollars, for value reed.

MOSES KNEELAND,
J. HADLEY,
CHARLES E. JENKINS.

Endorsed: EDMUND RICE,
Milwaukee, Wis.

Exhibit "A" produced and referred to in 9th interrogatory annexed.

GEORGE W. PRESCOTT.
Commissioner.

Answer. It was executed by Kneeland and Hadley in my presence. Mr. Jenkins was, I think, at the time in an adjoining room, and when the note was handed to me the names were on it, as this copy indicates.

10th interrogatory. Where was this?

Answer. In St. Paul, at the office of the Minnesota and Pacific Railroad Company, in Mackubin & Egerton's block.

11th interrogatory. Who were present at the time the note was handed to you?

Answer. Mr. Hadley handed it to me, but I do not recollect who else were present.

12th interrogatory. What was the consideration of that note?

Answer. The consideration was, that the parties whose names were on the note wanted my position as director in the board, and I resigned in consideration of the note and the previous agreements and assurances that the road should be built without delay. The office was valuable to me.

13th interrogatory. State whether or not there was any other consideration for the making or transfer of this note to you?

Answer to 13th interrogatory. There was not.

14th interrogatory. Who are now the owners and holders of this note?

Answer. I do not know. I am not the holder of it.

15th interrogatory. To whom did you transfer that note, and when?

Answer. To Oakes Ames, in August, 1857.

16th interrogatory. Where were Oakes Ames and yourself when you transferred it?

Answer. At Easton, Massachusetts.

17th interrogatory. What was the consideration for such transfer?

Answer. It was the cash for the note, less the discount, which

was the interest and expense of collection or exchange between Boston and Milwaukie.

18th interrogatory. State whether or not at the time of transferring said note to Oakes Ames, you mentioned to him the circumstances under which you received the said note?

Answer. I did not, not one word, nor did he know the manner in which I became possessed of the note?

19th interrogatory. State whether or not Oakes Ames was at the time of the transfer in partnership with the other plaintiffs in this action?

Answer. He was.

20th interrogatory. Did you endorse said note at the time of the transfer?

Answer. I think I did.

21st interrogatory. State whether at that time the plaintiff, Oakes Ames, was acquainted with the defendants or either of them?

Answer. I think not, but don't know.

22d interrogatory. Did you have any conversation at the time with him about the solvency of the defendants?

Answer. I did. I told him I considered them all good, and some of them rich.

23d interrogatory. State whether or not you delivered possession of the note to Oak Ames, at the time of its transfer?

Answer. I did, immediately, and it has never been in my possession since.

24th interrogatory. In whose possession was this note at the time it became due?

Answer. I don't know.

25th interrogatory. Did you ever send this note to the Bank of Milwaukee for collection?

Answer. I never did.

26th interrogatory. State whether or not at time of the transfer of said note you were indebted to the plaintiffs, or either of them: and if yea, in what sum?

Answer. I was not.

27th interrogatory. How was the consideration for the transfer of this note, by yourself to the plaintiff, Oaks Ames, paid, and when?

Answer. It was all paid in money, and was paid in August, 1857.

28th interrogatory. State whether or not the defendants or either of them were named as directors or corporators in the Minnesota and Pacific Railroad Company by the act of the legislature incorporating the company or creating the same?

Answer. They were not.

29th interrogatory. Have you any interest in this note?

Answer. I have not, and have not had any since the transfer of it.

WM. L. AMES.

And I do further certify, that the preceding interrogatories were proposed by said defendants' attorney to said witness, were reduced to writing by me; that the foregoing several answers of the said William L. Ames were also reduced to writing by me, as in the foregoing appears, and were signed in my presence by the said William L. Ames, after having been by me first carefully read to him; that the annexed paper writing, marked "A," is the paper writing produced and referred to in the 9th interrogatory and answer thereto, in the foregoing deposition; and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

[SEAL.] GEORGE W. PRESCOTT,
Clerk and ex-officio Commissioner, &c.

Here the defendants rested.

The foregoing contains all the testimony and proof produced on the trial by either party.

Whereupon, the evidence in the case being closed, the said court did then and there charge and instruct the said jury that, if the said promissory note is shown to have been transferred to the said plaintiffs for a full and valuable consideration before due, and that the plaintiffs had no knowledge at the time of purchasing the same, for what consideration said note was given by the defendants, nor of the circumstances accompanying the execution thereof, the defence set up by the defendants is not good as against these plaintiffs, and in their hands said note is a good and valid obligation against the defendants.

To which last mentioned charge and instructions of the said court, the said counsel for the said defendants did then and there, on behalf of the said defendants, duly except.

And the said court, under the charge, and with the instructions aforesaid, left the aforesaid issue, and the evidence so given on the trial thereof as aforesaid, to the said jury; and the said jury then and there gave their verdict for the said plaintiffs, and three thousand two hundred and seventeen dollars and forty-five cents damages. And inasmuch as the said several matters so produced and given in evidence on the part of the said defendants, and by their counsel aforesaid, objected and insisted on as a bar to the action aforesaid, do not appear by the record of the verdict aforesaid, the said counsel for the said defendants did then and there propose their aforesaid exceptions to the said charge and instructions of the said court, and requested the said district judge to put his seal to this bill of exceptions, containing the said several matters so produced and given in evidence on the part of the said defendants as aforesaid, according to the form of the statute in such case made and provided, and to the rules and practice of the said district court; and thereupon the said district judge, at the

request of the said counsel for the said defendants, did put his seal to this bill of exceptions, pursuant to the aforesaid statute, rules, and practice, on the sixteenth day of December, 1858.

A. G. MILLER. [SEAL.]

And same day, December 16, A. D. 1858, came the defendant, Moses Kneeland, and filed a bond in the penalty of six thousand dollars, with James Ludington as surety, conditioned to prosecute a writ of error to effect, and to answer all damages and costs, if they shall fail to make good their plea; which said bond is as follows:

Bond.

Supreme Court of the United States.

MOSES KNEELAND, JACKSON HADLEY, and CHARLES E. JENKINS, vs. OLIVER AMES, OAKES AMES, and OLIVER AMES, Jr.	In error.

Know all men by these presents, that we, Moses Kneeland as principal, and James Ludington and Otis B. Hopkins as sureties, all of the city and county of Milwaukee, in the State of Wisconsin, are held and firmly bound unto the above named Oliver Ames, Oakes Ames, and Oliver Ames, Jr., in the sum of six thousand dollars, to be paid to the said Oliver Ames, Oakes Ames, and Oliver Ames, Jr., their executors and administrators: to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this sixteenth day of December, 1858.

Whereas the above bounden Moses Kneeland and the above named Jackson Hadley and Charles E. Jenkins have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment in the above entitled suit by the district court of the United States for the district of Wisconsin:

Now, therefore, the condition of this obligation is such, that if the above named Moses Kneeland, Jackson Hadley, and Charles E. Jenkins shall prosecute their said writ of error to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

MOSES KNEELAND, [SEAL.]
JAMES LUDINGTON, [SEAL.]
OTIS B. HOPKINS. [SEAL.]

Sealed and delivered in presence of—
JOSHUA STARK.

District of Wisconsin, ss.

James Ludington, being sworn, doth say that he owns real estate in his own name in this State of the value of six thousand dollars over and above his debts and liabilities.

JAMES LUDINGTON.

Sworn and subscribed the 16th day of December, A. D. 1858.

A. G. MILLER, *Judge.*

Approval of bond.

And said bond is approved by the judge, as follows:
December 16, 1858. Bond and sureties approved.

A. G. MILLER, *Judge.*

And it is ordered that execution be superseded, and that a writ of error and citation be issued.

And same day writ of error and citation issued, and copy of writ of error lodged for defendants in error.

United States of America, district of Wisconsin, ss.

I, John M. Miller, clerk of the district court of the United States of America, for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals now on file and remaining of record in my office, being a full and complete exemplification of the record and proceedings in the suit of Oliver Ames, Oakes Ames and Oliver Ames, junior, vs. Moses Kneeland, Jackson Hadley and Charles E. Jenkins.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of said court, at the city of Milwaukee, in the said district of Wisconsin, this twenty-sixth day of
[SEAL.] May, in the year of our Lord one thousand eight hundred and fifty nine, and of the independence of the said United States the eighty-third.

J. M. MILLER, *Clerk.*

United States of America, ss.

The President of the United States of America to the judge of the
[L. S.] district court of the United States of America for the district of Wisconsin, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said district court of the United States of America for the district of Wisconsin, before you, between Oliver Ames, Oakes Ames and Oliver Ames, Jr., plaintiffs, and Moses Kneeland, Jackson Hadley and Charles E. Jenkins, defendants, a manifest error hath happened, to the great damage of the said Moses Kneeland, Jackson Hadley and Charles

E. Jenkins, as by the complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error that of right and according to law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this sixteenth day of December, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States the eighty-third.

J. M. MILLER, *Clerk.*

United States of America to Oliver Ames, Oakes Ames, and Oliver Ames, Jr., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the district of Wisconsin, wherein Moses Kneeland, Jackson Hadley, and Charles E. Jenkins are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this sixteenth day of December, A. D. 1858, and of our independence the eighty-third.

A. G. MILLER,
Judge of district court of the U. S. for the district of Wisconsin.

We accept service of a copy of within, Dec. 18, 1858.

FINCHES, LYNDE, & MILLER,
Attys. for Appellees.

761

Supreme Court of the United States.

DECEMBER TERM, 1862.—No. 27.

MOSES KNEELAND, JACKSON HADLEY, AND CHAS. E. JENKINS, PL'FFS IN ERROR,

VERSUS

OLIVER AMES, OAKES AMES, & OLIVER AMES, JR.

BRIEF AND POINTS OF DEFENDANTS IN ERROR.

A *bona fide* holder of a negotiable instrument for a valuable consideration, without notice of facts which impeach its validity between antecedent parties, if he takes it under an endorsement made before the same becomes due, holds the title unaffected by these facts, and may recover thereon, although as between the antecedent parties the transaction may be without any legal validity.

Goodman vs. Simonds, 20 *How. R.*, 343.

This writ of error was brought for purposes of delay, and defendants in error ask for ten per cent. damages, under the 23d Rule of this Court.

Jenkins vs. Banning, 23 *How. R.*, 455; *Sutton vs. Bancroft*, 23 *How R.*, 320; *Kilbourn vs. State Savings Institution of St. Louis*, 22 *How.*, 503; *Lathrop vs. Judson*, 19 *How.*, 67.

WM. P. LYNDE,
Counsel for Def'ts in Error.